260

92-291

Supreme Court, U.S.
FILED
AUG 10 1992
OFFICE OF THE CLERK

NUMBER 92-

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,

Petitioners,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

PETITION FOR WRIT OF CERTIORARI

K. KAY SHEARIN
1301 Maple Avenue
Wilmington DE 19805
302-995-6028

Counsel for Petitioners

I. QUESTIONS PRESENTED

A. Did the Court of Chancery of the State of Delaware violate the First Amendment by transferring real estate from a hierarchical church to its dissident former members?

B. Did the Court of Chancery commit reversible error by sanctioning Petitioners' counsel under Del.Ch.Ct.R. 11?

C. Is the error of the Court of Chancery, and of the Supreme Court of the State of Delaware in dismissing the appeal of the Chancery Court's judgment, so manifest on its face as to warrant summary reversal under this Court's Rule 16.1?

II. TABLE OF CONTENTS

		Page
I.	QUESTIONS PRESENTED	i
II.	TABLE OF CONTENTS	ii
III.	TABLE OF AUTHORITIES . . .	iii
IV.	OPINIONS BELOW	1
V.	JURISDICTION	2
VI.	PROVISIONS INVOLVED	4
VII.	STATEMENT OF THE CASE . . .	5
VIII.	ARGUMENT FOR ALLOWING WRIT	20

III. TABLE OF AUTHORITIES

Page(s)

CASES:

Cleaver v. Conference of African Union First Colored Methodist Protestant Church, 240 F.2d 57 (D.C.Cir. 1956) . . . 3, 12, 19, 21

Conference of African Union First Colored Methodist Protestant Church v. Shell, No. 4165, 1989 (Pa.Ct.C.P., Lancaster Cty. May 7, 1992) 19

Cooter & Gell v. Hartmarx Corp., 110 S.Ct. 2447 (1990) 25

Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327 (1987) 20

Jones v. Wolf, 443 U.S. 595 (1979) 4, 20, 21-22

Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952) 4, 20

Korean United Presbyterian Church of Los Angeles v. Presbytery of the Pacific, 230 Cal.App. 3d 480, 281 Cal.Rptr. 396 (App. Dep't Super.Ct. 1991), cert. denied, 60 U.S.L.W. 3520 (1992) . 3

Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960) 4, 20, 23

Little v. First Baptist Church, 475 U.S. 1148 (1986) 4, 20

Maryland & Virginia Eldership v. Church of God, 396 U.S. 367 (1970) . . . 4

Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memor'l Presbyterian Church, 393 U.S. 440 (1969) 4, 20, 22

Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976) 4, 20

Union Church of Africans v. Sanders, 6 Del. (1 Houst.) 100 (Del. 1855) 5-7, 19, 20, 21

Watson v. Jones, 80 U.S. 679 (1871) 4, 20

CONSTITUTION:

Amendments I & V 4

Amendment XIV, Section 1 5

STATUTE:

28 U.S.C. § 1257(a) 2

SUPREME COURT RULES:

Rule 10.1 & 13.1 2

Rule 16.1 23

OTHER COURT RULES:

Fed.R.Civ.P. 11 23

Del.Ch.Ct.R. 11 . . . . . 5, 23

CONGRESSIONAL RECORD:

97th Cong., 1st Sess., 127 Cong. Rec. (July 30, 1981) 11

98th Cong., 2D Sess., 130 Cong. Rec. (Aug. 9, 1984) 11

BOOKS:

L. Baldwin, The Mark of a Man: Peter Spencer and the African Union Methodist Tradition (1987) . . 8

Robert's Rules of Order §43, p. 85 (Pyramid ppbk. 1967) 15

IV. OPINIONS BELOW

The 25 June 1992 order of the Supreme Court of the State of Delaware--dismissing, without a separate opinion, Petitioners' appeal of the Chancery Court's 20 May 1992 judgment order--is set forth in the appendix at A001-04.

The Chancery Court's 20 May 1992 final order/judgment depriving Petitioners of ownership of the Church's real property is set forth at A005-08; the Chancery Court's opinion supporting that order is set forth at A030-98 and unofficially reported at [1992] Del.Corp.Lit.Rep. 10536 (Del.Ch. 1992). The appendix to that opinion [A080-98], which was the Chancery Court's 15 May 1991 opinion granting Respondents a preliminary injunction, was unofficially reported at [1991] Del.Corp.Lit.Rep. 8741 (Del.Ch. 1991).

The Chancery Court's 20 May 1992 order/ opinion sanctioning Petitioners' counsel is set forth at A009-29.

V. JURISDICTION

The judgment as to which Petitioners invoke the Court's jurisdiction is the 25 June 1992 Order [A001] of the Supreme Court of the State of Delaware, in No. 215, 1992, dismissing Petitioners' appeal of the 20 May 1992 judgment [A005] and order [A009] of the Chancery Court, in C.A.No. 12055. The parties named in the caption were the only parties to those proceedings; Petitioner non-stock religious corporation has no parent or subsidiary corporations.

This Court's jurisdiction is invoked under 28 U.S.C. §1257(a) and this Court's Rules 10.1 (b)&(c) and 13.1: The Delaware Supreme Court's 25 June order violated Petitioners' title, right, and privilege--

set forth in the First Amendment to the Constitution--to use their church building and govern their church without interference by civil/judicial authorities.

By allowing the Chancery Court's judgment to stand, Delaware's court of last resort decided this First Amendment federal question: (1) in direct conflict with: (a) the decision of the United States Court of Appeals for the District of Columbia Circuit in Cleaver v. Conference of African Union First Colored Methodist Protestant Church, 240 F.2d 57 (D.C.Cir. 1956), a case factually the same as this one and involving the same church; and (b) the decision of California's Court of Appeal in Korean United Presbyterian Church of Los Angeles v. Presbytery of the Pacific, 230 Cal.App. 3d 480, 281 Cal.Rptr. 396 (App. Dep't Super. Ct. 1991), cert. denied, 60 U.S.L.W. 3520 (1992); and (2) in direct conflict

with this Court's applicable decisions from Watson v. Jones, 80 U.S. 679 (1871), through Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952), Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960), Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memor'l Presbyterian Church, 393 U.S. 440 (1969), Maryland & Virginia Eldership v. Church of God, 396 U.S. 367 (1970), Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976), Jones v. Wolf, 443 U.S. 595 (1979), and Little v. First Baptist Church, 475 U.S. 1148 (1986).

VI. CONSTITUTIONAL PROVISIONS & RULE

Amendment I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .

Amendment V:

> No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Del.Ch.Ct.R. 11 is set forth at A021-22 of the Appendix.

VII. STATEMENT OF THE CASE

In 1813 Peter Spencer and certain other persons incorporated in Delaware the Union Church of Africans, elected trustees of the corporation, bought real estate on which they built the denomination's first church ("the Mother Church"), and adopted their first Book of Discipline. Union Church of Africans v. Sanders, 6 Del. (1 Houst.) 100, 101-103 (Del. 1855). The corporation,

which came to be called the "African Union Church," grew by organizing congregations in Delaware, New Jersey, Pennsylvania, New York, and Connecticut, all of them governed by the Book of Discipline and superintended by the unincorporated "Yearly Conference" (later, "Annual Conference") [Id. at 104].

Ellis Sanders became a member of the Union Church, then a preacher, then a deacon, then the elder in charge of the congregations in the southern half of the denomination [Id. at 105-06], and the Book of Discipline gave him the privilege to preach in any church in the denomination, but the trustees of the Mother Church congregation excluded him from that church, so in 1852 he sued the denomination in Delaware's Superior Court for a writ of mandamus requiring the denomination to enforce its own by-laws by causing the Mother Church to admit him to preach there [Id. at 106]. The Su-

perior Court first denied him the writ, then granted it on reargument, and the denomination appealed [Id. at 106-07].

The Court of Errors and Appeals found the facts to be as stated supra [Id. at 123], ruled that the appeal would lie [Id. at 114-15], and reversed the Superior Court's writ [Id. at 127] on grounds of separation of church and state [Id. at 133] and free exercise of religion [Id. at 126].

The denomination's 1813 Articles of Association provide, inter alia:

> Article 2. The said corporation shall have, hold, possess and enjoy the temporal property which they have at this time, or shall hereafter acquire, in trust for the religious uses of the ministers and preachers of the said Union Church, for them and their African brethren and their descendants of the African race, and also for the ministers and teachers of the African brethren duly licensed and ordained according to the discipline adopted by the corporation. [Id. at 102; Plt. Tr. Ex. 3 (A037-38)].
>
> Article 6. . . . [I]f it happens that the members shall become divided in

> opinion and a majority of them shall be unwilling to be governed by the Rules and principles that this Church is founded on, such of them so swerving from the true principles thereof shall be no longer Members of said "Union Church." And if there should happen to be no more of the Members of this Corporation than one maintaining the Rules that one shall hold the right and prerogative of the said Church. And that the Bye-Laws and Regulations which shall be made by the Trustees from time to time together with these "Articles of Association" shall be deemed and taken to be and shall be the true foundation of said Church, and the foundation on which the said Corporation shall exist.

L. Baldwin, The Mark of a Man: Peter Spencer and the African Union Methodist Tradition 75 (1987); A046-47.

Real property in Delaware was conveyed to "The African Union Church" corporation in July 1813 [Plt. Tr. Ex. 7] and August 1837 [Plt. Tr. Ex. 5] and to "Union Church of African Members" in July 1905 [Plt. Tr. Ex. 6].

In 1924 the Mother Church congregation recorded, in New Castle County, Delaware,

a document certifying that that "Congregation of the African Union Church" had, at a duly called meeting on 20 June 1924, increased the number of its trustees from 7 to 9 and elected 9 named persons to staggered terms as trustees, and three-fourths of those trustees had voted to change the name of the congregation to "Mother African Union First Colored Methodist Protestant Church." [Plt. Tr. Ex. 4.] Although no evidence of that congregation's incorporation was ever introduced, that document referred to the Mother Church congregation as "the said corporation."

At a convention in Maryland in 1865 representatives of the "African Union Church" and the "First Colored Methodist Protestant Church" voted to unite into the "African Union First Colored Methodist Protestant Church" [Book of Discipline at ii]. In 1941 the denomination reincor-

porated [n. 13, A095], as the "African Union First Colored Methodist Protestant Church," to merge the unincorporated Yearly Conference into it and "unite the Church Government . . . under the Doctrine and discipline of the African Union First Colored Methodist Protestant Church," and in 1953 it changed its corporate name to "The Conference of African Union First Colored Methodist Protestant Church," which is still Petitioner's official name, but it also still uses the name "African Union Methodist Protestant Church."

Until Respondents filed this suit in Chancery Court in April 1991, there was never any suggestion that Petitioner denomination was not the church founded by Peter Spencer in 1813, and numerous historical markers, official proclamations, and history books said it was:

Peter Spencer, who established the

> first completely independent black denomination in 1813, was a Delawarean. Spencer's first church, the Union Church of Africans, was built by congregants who followed the theological and ethical tenets of Methodism. . . . Today the direct successor to Spencer's first church is the Mother African Union Methodist Protestant Church in Wilmington. . . . [T]he original Union Church of Africans has been torn down and replaced by a public plaza and the Boggs Federal Building.

97th Cong., 1st Sess., 127 Cong. Rec. (July 30, 1981)(remarks of Sen. Biden).

> [B]ack in 1813, when the Reverend Peter Spencer founded the first fully independent black American religious denomination in Wilmington, Delaware. . . . [t]he Reverend Peter Spencer and the first congregation of that first independent black religious denomination understood that when they opened their own church doors to the future . . .

98th Cong., 2d Sess., 130 Cong. Rec. (Aug. 9, 1984)(remarks of Sen. Biden).

In 1953 a majority of the members of the AUMP congregation in Washington DC voted to secede from the denomination because the presiding prelate would not appoint the pastor they wanted. St. Paul's AUFCMP

Church was separately incorporated in the District of Columbia and held legal title to its church building, so the denomination sued it and its trustees in federal court for ownership of the building. After trial the federal judge entered judgment for the denomination [A099-A105], the dissidents appealed, and the appellate court affirmed. Cleaver v. Conference of African Union First Colored Methodist Protestant Church, 240 F.2d 57 (D.C.Cir. 1956).

In 1969 the original Mother Church site, conveyed to the African Union Church in 1813 [Plt. Tr. Ex. 7], was sold and the proceeds used to buy an existing church building, titled in the Mother Church corporation [Plt. Tr. Ex. 10]. All the congregations in the denomination continued to use that building as the denominational mother church.

Respondent Gardner testified the Book

of Discipline written by Bishop Spencer in 1813 and amended several times over the years was the Conference's bylaws and had been the Mother Church's bylaws from 1813 until 1991 [Tr. Trans.: l. 17, p. 295 to l. 23, p. 299], and Respondent Comegys testified the Book of Discipline set forth the Mother Church's trustees' duties [Tr. Trans.: ll. 21-23, p. 367]. No other corporate bylaws for the Mother Church were ever introduced, and Gardner's testimony that there were none [Tr. Trans.: ll. 7-10, p. 296; ll. 16-23, p. 299] was uncontradicted, but the Vice Chancellor relied on the Mother Church's bylaws which he said were separate from the Conference's [A037-38 & n. 2; A042; A048].

In January and April 1991 the Annual Conference, which is the AUMP Church's legislative body comprising clerical and lay representatives elected by the members of

every congregation in the denomination, adopted amendments to the bylaws specifying that property titled in the congregations was held in trust for the Conference and requiring trustees of the congregations to execute documents relating to church real estate when directed to do so by the Conference [Plt. Tr. Ex. 14; Tr. Trans.: l. 1, p. 77 to l. 1, p. 78; ll. 18-21, p. 88].

Pursuant to those bylaws, which were adopted by large majorities that included all the Mother Church's representatives, on 6 April 1991 Respondent's pastor executed a quit claim conveying the Mother Church's interests in its real property to Petitioner Conference [Plt. Tr. Ex. 25]. Two days later the denomination removed the Mother Church's pastor and appointed Thomas Moon as his replacement, but on 9 April some members of the Mother Church held a meeting where they voted to leave

the AUMP Church, and when Pastor Moon arrived to take up his duties, they had police order him off the premises [A041-42]. The Vice Chancellor said the bylaws did not specify a quorum for that meeting, so 8 Del.C. §215(c) applied [A041-44], but the Book of Discipline did provide ["Rules of Order," Article VI, ¶G, p. 48] that Robert's Rules of Order controlled any point not specified in the Discipline, and Robert's provides that absent a special rule, "the quorum of every assembly is a majority of all the members" [§43, p. 85 (Pyramid ppbk. 1967)]. The Discipline also provided: once a church joined the Conference it could not thereafter "reject any part or provision thereof of the Book of Discipline and the regulations" [Art. III, ¶6, p. 35]; the trustees of a member church are prohibited from calling any meeting except through the pastor and to carry out their

routine duties [Art. XII, p. 71]; and the pastor is the chairman of the board of trustees and "cannot and shall not call any meetings(s) to change the name of, or in any way change the status of, the church in the Conference" [Art. X, pp. 56-57].

Although the Discipline provided that, by their vote to secede, Respondents had ceased to be trustees and members of the Church, the denomination formally excommunicated them [Tr. Trans.: l. 24, p. 175 to l. 6, p. 176; ll. 11-17, p. 370], and Pastor Moon and the members who remained faithful to the Discipline elected new trustees [A045]. On 18 April 1991 the two individual Respondents filed this suit against Petitioner Jackson, and at the TRO hearing the next day Petitioners first raised the Constitutional issues sought to be reviewed here; the Chancery Court addressed those questions in its opinion

granting preliminary injunction [A090] and in its judgment [A035-39].

On the second day of the trial, Respondents' attorney Thomas S. Neuberger intimidated Pastor Moon into leaving the courthouse, and Petitioners' attorney complained to the Vice Chancellor [A114], who declined to take action. After the case was tried (16-17 September 1991), but before the Chancery Court delivered its judgment (22 April 1992), the Vice Chancellor instructed Petitioners' attorney K. Kay Shearin to schedule a funeral for a dissident's spouse, Shearin asked the Vice Chancellor to put that instruction on the record so she could seek appellate review [¶2.c, A107], the Vice Chancellor refused to do so [n. 2, A017-18], and Shearin refused to schedule the funeral [A016].

The Vice Chancellor then instructed Respondents' attorneys to move to hold Shear-

in in contempt, they so moved on 3 April, on 6 April Shearin moved [A106-13] to withdraw her appearance for ethical reasons, and on 30 April the Vice Chancellor declined to hold Shearin in contempt [A017]. The Vice Chancellor then instructed Respondents' attorneys to move to sanction Shearin under Del.Ch.Ct.R. 11 [A116-19].

On 22 April the Vice Chancellor had delivered his judgment in the case, and by a letter dated 13 May Shearin complained to the Court on the Judiciary that the Vice Chancellor's conduct throughout the case had been aberrational. On 20 May the Vice Chancellor sanctioned Shearin under Rule 11 [A009-29], and on 29 May the Court on the Judiciary summarily dismissed the complaint against the Vice Chancellor [In re: Hon. Jack B. Jacobs, No. 9, 1992].

On 23 April Petitioners noticed an appeal of the Chancery Court's judgment,

but on 20 May Delaware's Supreme Court dismissed that appeal as interlocutory [Conference of AUFCMP Church v. Mother AUFCMP Church, No. 174, 1992]. On 20 May the Chancery Court issued its amended final judgment order [A005] and order sanctioning Shearin [A009]; on 26 May Petitioners noticed an appeal of both orders, and in their 15 June response to the Supreme Court's order to show cause Petitioners raised the federal questions sought to be reviewed here, saying:

> [T]he Chancery Court's judgment is in direct, unreconcilable conflict with:
> (a) Delaware's highest court's findings of fact and law in Union Church of Africans v. Sanders, 6 Del. (1 Houst.) 100 (Del. 1855);
> (b) the rulings in the other two cases with the same facts in other jurisdictions, namely, Cleaver v. Conference of African Union First Colored Methodist Protestant Church, 240 F.2d 57 (D.C.Cir. 1956), and Conference of African Union First Colored Methodist Protestant Church v. Shell, No. 4165 of 1989, Court of Common Pleas of Lancaster County PA, 7 May 1992; and
> (c) the entire line of church-property

cases including: Watson v. Jones, 80 U.S. 679 (1871); Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952); Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960); Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memor'l Presbyterian Church, 393 U.S. 440 (1969); Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976); Jones v. Wolf, 443 U.S. 595 (1979); Little v. First Baptist Church, 475 U.S. 1148 (1986), and Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327 (1987).

On 25 June the Supreme Court dismissed the appeal [A001] without addressing those federal questions.

VIII. ARGUMENT FOR ALLOWING WRIT

It is manifest that the Chancery Court erred in finding that the 1813 Articles of Association were the Mother Church's, not the Conference's: Delaware's then-highest court's findings in Sanders, 6 Del. at 101-02, 123, while witnesses to the denomination's founding were still alive, were conclusive of that issue, and the Chancery

Court was required to give full faith and credit to the District of Columbia's then-highest court's findings [A100] in Cleaver, 240 F.2d at 57, to the same effect.

The Chancery Court also erred in finding the Book of Discipline was not the corporate bylaws of both the Conference and the Mother Church, when the courts in Sanders and Cleaver both found it was, Respondent Gardner so testified, and there was no evidence whatsoever that it was not.

The Articles of Association specified that all property ever acquired was held in trust for the denomination [Art. 2] and that as long as any members remained faithful in a schism, they were the true members of the church, and the dissidents were not [Art. 6]. The secular language of those Articles and the bylaws in the Discipline required the Chancery Court to rule in Petitioners' favor in this case. Jones v.

Wolf, 443 U.S. 595 (1979); Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memor'l Presbyterian Church, 393 U.S. 440 (1969).

At least eight other congregations of Petitioner denomination have filed litigation to secede or to void deeds for their buildings, and there have already been inconsistent rulings: In Chester County PA the Court of Common Pleas entered default judgment for the dissidents, but in Lancaster County PA the Court of Common Pleas entered judgment, after trial, for the Conference, and that case is now on appeal. Still pending are suits filed by four congregations in Delaware's Chancery Court, one in Wicomico County MD's Circuit Court, and one removed to federal court in the District of New Jersey from Superior Court. There is also pending in the Third Circuit an appeal of the dismissal of the 42 U.S.C.

§1983 suit in the District of Delaware discussed at A064-71.

This repetitive litigation is not only throttling Petitioner denomination but also squandering precious judicial resources, and a summary reversal of the Chancery Court's judgment, under Rule 16.1, would end the litigation forthwith. As in Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960), there is no new issue in this case, and the reasons the Court must act are that the judgment below is in direct conflict with prior rulings of the Court and with rulings in other jurisdictions.

The Chancery Court's order sanctioning Petitioners' attorney may also be reversed summarily because that court's error is clear from its opinion [A022-26]: Del.Ch. Ct.R. 11, which reads the same as Fed.R. Civ.P. 11, is intended to discourage attorneys from filing papers not grounded in

fact or law [A021], the Vice Chancellor found that Shearin had shown no basis in fact for saying Moon was Respondents' agent [A025] and no basis in law for saying she could not ethically schedule the funeral with him [A026], and the record showed her factual [A116-17] and legal [A108-10] bases for those statements. Shearin's position was always that she represented both Bishop Jackson (a defendant in the suit) and Pastor Moon (not a party but employed by the plaintiff congregation), and she could not schedule the funeral, not because Moon was not her client, but because Jackson and the Conference were, and it would violate her ethical duty to them, as well as her First Amendment right not to be forced to participate in a religion she did not espouse.

It was therefore an abuse of the Chancery Court's discretion to hold Shearin in

violation of Rule 11, Cooter & Gell v. Hartmarx Corp., 110 S.Ct. 2447, 2457-61 (1990), so that order must be reversed.

Respectfully submitted,

K. KAY SHEARIN
Attorney for Petitioners